IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.1061 OF 2005

Shri Suresh Sarjerao Patil and Ors. ..Appellants
Versus
Shri Vijaykumar Dhondiram Patil and Ors...Respondents

Mr.Dilip Bodake for appellants

CORAM : P.V.KAKADE, J.

DATE : 20TH SEPTEMBER, 2005.

P.C.:

1. The appellants have preferred appeal against the judgment and order passed by Addl. District Judge, Karad dated 28.3.2005 dismissing the appeal and confirming the judgment and order passed by civil Judge Junior Division, Karad dated 1.9.2004 decreeing the plaintiffs' suit for perpetual injunction.

2. I have heard the learned counsel for the appellants. Perused the record.

3. The plaintiffs filed the suit for perpetual injunction against the defendants submitting that the old wall of length of 86 feet was south-north direction

was in existence when the suit was filed. The east of the said wall is house of plaintiffs. To the west there was open space of defendants and their house CTS No.669. CTS No. of house of plaintiff is 670. The plaintiffs raised contention that 40 feet length wall of northern side is common wall between the plaintiffs and the defendants and restraining 40 feet southern side wall was exclusively owned by the plaintiffs. It is also contended that on 30.1.1999 defendants dismantled their own house situated on west of common wall and they have also damaged common wall and intended to dismantle and demolish the common wall and therefore, suit for perpetual injunction came to be filed. The defendants contested the suit, inter alia, denying the allegations on the ground that northern side 40 feet length wall was exclusively owned by the defendant. In the southern portion plaintiffs had done encroachment and constructed 40 feet length wall. Plaintiffs are owners of space admeasuring 34’ east west x 140’ south north and defendants had also 4 feet width open space to the east of wall in question. For the purpose the defendants have also filed counter claim.

. The learned trial judge adjudicated the dispute

on merits and came to the conclusion that the plaintiffs had proved their case and decreed the suit issuing perpetual injunction against the defendants. The counter claim filed by the defendants came to be dismissed. The appeal was carried to the District Court. The learned Addl. District Judge after hearing both the parties came to the conclusion that the findings recorded by the trial court were legal and proper and dismissed the appeal. Hence the present appeal.

4. At the outset, it must be noted that there is absolutely no substantial question of law involved in this appeal. It is submitted on behalf of the appellants that the Gramppanchayat record was sufficient to establish the defendants claim. However, the plaintiffs case is based on document of Sanad, which was issued after Survey was completed in the year 1982 and therefore, it is obvious that the evidence of Sanad should prevail as against the Grampanchayat record, which stood earlier before City Survey was made. In other words, while City Survey was made Grampanchayat record was bound to be taken into consideration and inspite of this aspect the Sanad was issued, which fact

supports the plaintiffs' claim.

5. Under these circumstances the concurrent findings recorded by both the courts below appears to be just, legal and proper and therefore, the appeal has no substance. In the result the appeal stands dismissed.

. Consequently Civil Application No.1579 of 2005 also stands dismissed with no order as to costs.